Opinion of January 14, 1999,Withdrawn, Reversed and Remanded and Substitute Opinion on Rehearing filed September 23, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-97-01033-CV

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BRAZORIA CIVIC CLUB, FRANK FIELDS, and JOEL FARRINGTON, Appellants

V.

BEN MACK, SR. and ROBERT B. CRECY, Appellees

On Appeal from the 239th District Court
Brazoria County, Texas
Trial Court Cause No. 701*JG97

O P I N I O N O N R E H E A R I N G

Appellants, Brazoria Civic Club, Frank Fields, and Joel Farrington, appeal a judgment denying injunctive relief. Appellants appeal on five points of error. In this opinion on rehearing, we withdraw our previous opinion in the case and issue this opinion reversing the trial court judgment.[1]

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[1] In our original opinion we held that appellants had not followed the proper procedure for obtaining a partial statement of facts. Based on arguments made by appellants in their motion for rehearing, we conclude that their actions sufficiently complied with the appellate rules to appeal on a partial statement of facts.

BACKGROUND FACTS

The Brazoria Civic Club was organized in the early 1960's. The Club bought property and a building known as "the Hut." The property and building were to be used as a meeting place for the African-American community. Throughout the years, the property has served as a meeting place for Boy and Girl Scout troops as well as the community at large. On March 9, 1997, two original Club members and Club trustees, Mack and Crecy, contracted to sell the property and its attached buildings. The Brazoria Civic Club, Frank Fields, and Joel Farrington filed a petition seeking to enjoin the sale of the property and its attached buildings. After a trial, the trial court denied all injunctive relief. Appellants appealed the trial court's judgment on five points of error.

STANDARD OF REVIEW

The review of the grant or the denial of a temporary injunction is strictly limited to a determination of whether there has been a clear abuse of discretion in the grant or denial of the interlocutory order. *See Davis v. Huey*, 571 S.W.2d 859, 861-62 (Tex. 1978). The merits of the underlying case are not presented for review. *See id.* at 861. The reviewing court may not substitute its judgment for that of the trial court. *See id.* at 862. The trial court abuses its discretion when it acts arbitrarily and unreasonably, without reference to guiding rules or principles, or it misapplies the law to the established facts of the case. *See Baywood Country Club v. Estep*, 929 S.W.2d 532, 535 (Tex. App.—Houston [1st Dist.] 1996, writ denied).

DISCUSSION AND HOLDINGS

In their first point of error, appellants contend the trial court erred in its ruling that Brazoria Civic Club, Frank Fields, and Joel Farrington had no standing to bring this action. Based on the evidence in the record, Brazoria Civic Club had standing to sue. The evidence shows that the Brazoria Civic Club was formed in the 1960's to provide a place for the African-American community to meet. Although this organization was not formally incorporated, it did not need to be for it to have standing to sue. According to the Texas Rules of Civil Procedure,

> Any partnership, unincorporated association, private corporation, or individual doing business under an assumed name may sue or be sued in its partnership, assumed or common name for the purpose of enforcing for or against it a substantive right, but on a motion by any party or on the court's own motion the true name may be substituted.

TEX. R. CIV. P. 28. An unincorporated association is a voluntary group of persons, without a charter, formed by mutual consent for purposes of promoting a common enterprise. *See Cox v. Thee Evergreen Church*, 836 S.W.2d 167, 169 (Tex. 1992); *Huett v. State*, 970 S.W.2d 119, 124 (Tex. App.—Dallas 1998, no pet.); *Hutchins v. Grace Tabernacle United Pentecostal Church*, 804 S.W.2d 598, 599 (Tex. App.—Houston [1st Dist.] 1991, no writ). The Brazoria Civic Club was clearly an unincorporated association and had standing to sue.

The evidence also shows that Joel Farrington was a member of the Brazoria Civic Club. In fact, in the trial court's oral pronouncements, he stated that Joel Farrington has standing to sue. As to Frank Fields, the issue is not as clear. The record reflects that Fields paid his initial membership dues. However, there is some dispute as to whether or not one had to contribute to the payment of bills and work to maintain the premises to remain a member of the Club. There is also some dispute as to whether Fields complied with these payment and work requirements. However, regardless of whether Fields was a member, it is clear that Farrington was. Based on the record, both Brazoria Civic Club and Farrington had standing to sue to enjoin appellees from selling land belonging to the Club. Thus, the trial court erred by concluding that Brazoria Civic Club and Joel Farrington had no standing to sue. We, therefore, sustain appellants' first point of error as to these two parties.

In its fifth point of error, appellants contend the trial court erred by failing to grant injunctive relief. "To be entitled to injunctive relief, the plaintiff must prove: 1) the existence of a wrongful act; 2) the existence of imminent harm; 3) the existence of irreparable injury; and 4) the absence of an adequate remedy at law." *Morris v Collins*, 881 S.W.2d 138, 140 (Tex. App.—Houston [1st Dist.] 1994, writ denied) (quoting *Priest v. Texas Animal Health Comm'n*, 780 S.W.2d 874, 875 (Tex. App.—Dallas 1989, no writ). In this case, appellants have satisfied these conditions. The wrongful act in this case is the contract to sell the assets of Brazoria Civic Club by two members of the Club, without the consent of its other members.

The imminent harm in this case is the pending sale. The irreparable injury is the permanent loss of the land. Lastly, based on this record, appellants do not have an adequate remedy at law. They may have a cause of action for damages, however, such a remedy at law does not prevent the issuance of a temporary injunction when the ownership of real estate is at issue. "When ownership of real estate is at issue, existence of a cause of action for damages is no basis for denying equitable relief." *El Paso Development Co. v. Berryman*, 729 S.W.2d 883, 888 (Tex. App.—Corpus Christi 1987, no writ); *see Irving Bank & Trust Co. v. Second Land Corp.*, 544 S.W.2d 684, 688 (Tex. App.—Dallas 1976, writ ref'd n.r.e.). Thus, we find appellants satisfied the requirements for a temporary injunction. The trial court abused its discretion in denying appellants' request for a temporary injunction. We, therefore, sustain appellants' fifth point of error, reverse the decision of the trial court, and remand this cause to the trial court to issue a temporary injunction until a trial on the merits of the case.[2]

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Wanda McKee Fowler
Justice

Judgment rendered and Opinion on Rehearing filed September 23, 1999.
Panel consists of Justices Yates, Amidei, and Fowler.
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[2] We need not address appellants' second, third, and fourth points of error as the issue has been resolved by our discussion of the other two points of error.